IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.MC.No. 3465 of 2007()

CC.205/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR

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PETITIONER: PETITINER/ACCUSED

VINOD, S/O.RAMAKRISHNAN,
PATHIPPARAKKALAM,ANAMARI,
MUTHALAMADA, CHITTUR, PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: COMPLAINANT

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1. KUNJAN, S/O.RAMAN
KALLIYAMPARA ADIVASI COLONY
ANAMARI, MUTHALAMADA, CHITTUR, PALAKKAD.

2. STATE OF KERALA
REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.P. RAVEENDRA BABU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3465 of 2007

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Dated this the 16th day of November, 2007

O R D E R

The petitioner has been arrayed as an accused in a private complaint filed by the first respondent herein. The petitioner has come to this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against him.

2. It will be apposite to briefly advert to the relevant facts, which has culminated in the initiation of the prosecution against the petitioner on a private complaint. About an incident which took place on 19.12.2004, the first respondent had lodged a F.I. statement before the police and crime 341 of 2004 was registered at the Kollengode police station. In that the complainant had specifically alleged that two persons, including the petitioner herein, (who was shown as the first accused) had committed offences punishable under Sections 341, 323 and 324 r/w. 34 I.P.C. against the defacto complainant. Crime was

registered. Investigation was conducted and final report was filed by the police after such investigation.

3. In the final report submitted by the police, no allegations were raised against the petitioner and the petitioner was dropped from the array of accused. Final report showed only one accused, i.e. the second accused in the F.I.R., as the sole accused. It would appear that no notice was ever given to the first respondent of the dropping of the petitioner from the array of accused. The first respondent received summons from the court in the police charge case to appear as a witness. He went to the court and at that stage, it appears, he came to realise that the petitioner has been dropped from the array of accused. He tendered evidence on oath. In the evidence, he implicated the petitioner herein also. The learned Prosecutor filed an application under Section 319 Cr.P.C. that cognizance may be taken against the petitioner herein also.

4. In the mean time, the first respondent filed a private complaint raising his grievance against the dropping of the petitioner from the array of accused. That complaint was pending as Crl.M.P. Adverting

to that facts and on that ground the petition filed by the Prosecutor under Section 319 Cr.P.C. was dismissed. Later, the learned Magistrate took cognizance of the offences allegedly committed by the petitioner on the basis of the private complaint (copy of which is Annex.A) filed by the first respondent.

5. The petitioner has now come to this court with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the case initiated on the basis of the private complaint against the petitioner. What is the reason? The only reason urged is that the police after investigation had come to the conclusion that the petitioner is not guilty and had dropped him from the array of accused. That is no reason to foreclose the option of the first respondent to file a private complaint. That the police had dropped the petitioner from the array of accused is certainly not a valid reason to not entertain the private complaint filed by the first respondent later.

6. The learned counsel for the petitioner then contends that there was delay in the filing of the private complaint. There is nothing to show that notice was given to the first respondent before or at the time

when cognizance was taken only against the second accused shown in the F.I.R. As stated earlier, there is nothing to show that any such notice/information was given to the first respondent. The allegation is not barred by limitation and there is no contention before me that cognizance was barred by the provisions relating to limitation in the Cr.P.C.

7. It follows from the above discussions that the powers under Section 482 Cr.P.C. do not deserve to be invoked against the cognizance taken of the offences alleged against the petitioner as per Annex.A complaint by the learned Magistrate.

8. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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